IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SITA RAM CHHOTALAL BARBAR

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 2 of 1992

Mr. D.D. Vaidya, for HL PATEL ADVOCATES for Petitioner No. 1

Mr.V.B. Seth, AGP, for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 19/09/2003

ORAL JUDGEMENT

1. The appellant, in this appeal, has challenged the

judgment and decree dated December 11, 1991, passed by the learned Judge, Court No.9, City Civil Court, Ahmedabad, in Civil Suit No.1404 of 1991, by which, the suit filed by the appellant for a declaration that the order of removal dated February 26, 1991, bearing No. SB.1/Kht/846/91, was without jurisdiction, null and void, and unconstitutional, was dismissed. The prayer for permanent injunction restraining the defendants from taking over the possession of the quarter bearing No.1, in SRP Block No.11, allotted to the appellant-plaintiff, was also rejected by the trial court.

2. The facts, in brief, as narrated in the plaint, are as under.

2. The appellant (original plaintiff) was an armed police constable in SRP Group II, working under the respondent No.2. The respondent No.3 had chargesheeted the appellant on May 4, 1988, for committing breach of Rule 26 of the Gujarat Civil Services (Conduct) Rules, 1971 ('Rules' for short). The said chargesheet was issued against the appellant as he had contracted second marriage during subsistence of his first marriage. The appellant had submitted his reply in defence. A departmental enquiry was held. During the enquiry, both the wives of the appellant and other 16 witnesses were examined. The appellant was represented by his next friend and the witnesses were cross examined. The appellant, in his defence, had examined his mother, Vasanti Devi Chhotalal Barbar. During the enquiry, the Department had produced documentary evidence. The Presiding Officer, who had conducted the enquiry, at the end, by his detailed report, had come to the conclusion that it was proved that the appellant had committed breach of Rule 26 of the Rules, as he had contracted second marriage during subsistence of the first marriage. The Presiding Officer had forwarded his report along with other case papers to the Disciplinary Authority.

3. D.M. Solanki, Commandant, State Reserve Force, Group II, Ahmedabad, had issued show cause notice on July 27, 1989 to the appellant that he should not be dismissed from service, as he had committed breach of Rule 26 of the Rules. It appears that no action was taken pursuant to the show cause notice issued on July 27, 1989.

4. On January 30,1991, the Commandant, State Reserve Force, Group II, Ahmedabad, had issued another show cause notice to the appellant, calling upon him to show cause as to why he should not be removed from the service for having committed breach of Rule 26 of the Rules by

contracting the second marriage. The appellant had replied to the second show cause notice through his advocate Mr. N.P.Patel on February 6, 1991. Shri V.K. Mal, Commandant, SRP Group No.II, Ahmedabad, on February 16, 1991, after considering the reply filed by the appellant through his advocate, had passed an order removing the appellant from service as Constable in SRP Group II. It was stated that, if the appellant wanted to challenge the order of removal, he should file an appeal within two months to the Deputy Inspector General of Police, Armed Division. The record indicated that the appellant had filed an appeal before the Appellate Authority and the said appeal came to be dismissed by the Deputy Inspector General of Police, Armed Division, by order dated December 4, 1991.

5. During pendency of the appeal, the appellant had filed Civil Suit No.1404 of 1991 in the City Civil Court, Ahmedabad, challenging the order of removal. In the suit, the appellant had also prayed for a permanent injunction restraining the respondents from evicting him from the quarter allotted to him while he was serving as Constable in SRP Group II, Ahmedabad. In the suit, the appellant had challenged the order of removal, inter alia, contending that:

(i) the factum of second marriage was not duly proved in the departmental enquiry;
(ii) keeping a mistress was not a misconduct under the Police Manual and, therefore, the original defendant No.3 had agreed and had informed the plaintiff's friend that the charge against him would be withdrawn and the proceedings would be quashed;
(iii) with the change of Commandant Presiding Officer, second show cause notice was issued calling upon the appellant to show cause as to why he should not be removed from service for misconduct on his part for having committed breach of Rule 26 of the Rules;
(iv) the departmental enquiry was conducted in flagrant violation of the guidelines issued by the Home Department bearing No. PPE/2581/2104-G, dated May 25, 1981;
(v) the departmental enquiry was conducted in the absence of the Presenting Officer and, therefore, the enquiry cannot be called as an independent enquiry;

(vi) in conducting the departmental enquiry, there was breach of the principles of natural justice and the appellant was denied opportunity of putting forward his defence in the enquiry and, therefore, the

enquiry was void, illegal and without jurisdiction.

6. The respondents had filed written statement at Exh.24, inter alia, contending that:

(i) the appellant had committed serious misconduct by contracting second marriage and thereby committed breach of Rule 26 of the Rules;
(ii) the departmental enquiry was conducted by following the prescribed guidelines and procedure and the appellant was afforded fullest opportunity to present his case in his defence;
(iii) even after issuance of the second show cause notice, the appellant was afforded proper opportunity to file his reply in defence and, thus, before passing the order of removal, all the principles of natural justice were scrupulously observed;
(iv) the order of removal was passed by the competent authority who was the Appointing Authority of the appellant;
(v) even after the order of removal, the appellant had illegally retained the possession of the quarter allotted to him and, therefore, the prayer for injunction restraining the respondents from dispossessing him from the said quarter be rejected.

7. On the basis of aforesaid rival pleadings of the parties, the learned Judge had framed issues at Exh.46. It be mentioned that neither of the parties had led oral evidence and mainly relied on the documentary evidence and the papers of the departmental enquiry at the time of hearing of the suit.

8. The learned Judge, Court No.9, City Civil Court, Ahmedabad, on going through the documentary evidence, and the submissions made by the learned advocates for the parties, had dismissed the suit filed by the appellant challenging the order of removal dated February 26, 1991 and had vacated the interim injunction granted in favour of the appellant restraining the respondents from evicting the appellant from the said quarter, which order has been challenged by the appellant by filing this appeal.

9. Mr. D.D. Vaidya, learned advocate for M/s. H.L. Patel Advocates, for the appellant, and the learned AGP, Mr. V.B. Seth, for the respondents, have taken me through the entire record and proceedings.

10. The learned advocate for the appellant has submitted that the first marriage of the appellant with

Reshmidevi was dissolved by caste custom and, therefore, the second marriage was not illegal. In the alternative, it was submitted by the learned advocate for the appellant that, in the departmental enquiry, it was not proved that the appellant had solemnized the second marriage in as much as there was no ceremony like 'Saptapati' nor any other religious rites were performed and, therefore, it was not proved that there was second marriage performed by the appellant. It was next contended that the Enquiry Officer had conducted the departmental enquiry against the guidelines prescribed, as he had cross examined the witnesses. It was next contended that the departmental proceedings were void, as no Presenting Officer was appointed. The learned advocate for the appellant has further submitted that, even if the charge is proved against the appellant for having committed breach of Rule 26 of the Rules, the punishment of removal from service was, grossly, disproportionate and, therefore, the punishment imposed on the appellant may kindly be suitably reduced and the appeal be allowed accordingly.

11. The learned AGP, Mr. V.B. Seth, has, on the other hand, vehemently submitted that all the requirements in accordance with the principles of natural justice and the guidelines prescribed by the Department were scrupulously followed by the Presiding Officer during the enquiry proceeding. The Presiding Officer had conducted the enquiry by giving ample opportunity to the appellant to represent his case and to cross examine the witnesses examined by the Department during the course of the enquiry. It was contended by the learned AGP that, during the enquiry, the Department had examined both the wives of the appellant, and it was proved through the evidence of the first wife that the appellant had neglected her, had deserted her, had not provided maintenance for her and her children, and the marriage between the first wife and the appellant was not dissolved by any competent Court or by customary divorce. It was contended by the learned AGP that, through the evidence of the second wife, Rehana alias Renuka, it was proved that the appellant had contracted the second marriage in the Court as was admitted by the second wife herself. It was contended by the learned AGP that, in a departmental enquiry, strict rules of evidence are not applicable, and the only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Relying on the

judgment of the Supreme Court in the case of Bank of India and another vs. Degala Suryanarayana, reported at AIR 1999 Supreme Court 2407, the learned AGP has contended that the findings arrived at in the Departmental Proceedings would not be interfered with by the Court and the Court cannot embark upon reappreciating the evidence or weighing the same like an Appellate Authority. It was contended by the learned AGP that the appellant had filed an appeal under the relevant Rules before the Deputy Inspector General of Police which was dismissed and the order of removal was confirmed and, therefore, the finding so recorded by the Disciplinary Authority and confirmed by the lower court, was immune from interference within limited scope of power of judicial review available to the Court and, therefore, the appeal be dismissed.

12. The submissions of the learned advocate for the appellant that the Presiding Officer had not conducted the enquiry properly; that there was breach of principles of natural justice; and that the Enquiry Officer had misconducted himself by cross examining the witnesses, do not deserve any merit. During the departmental enquiry, the appellant was afforded full opportunity to defend his case. Even his next friend was permitted to appear on behalf of the appellant and he had cross-examined the witnesses examined by the Department. The Enquiry Officer had followed the procedure prescribed in the guidelines by the Home Department and had offered full opportunity to the appellant to put forward his defence. The witnesses examined by the Department had proved that the appellant had deserted his first wife Reshmidevi and her children and had not taken care for their maintenance. Without obtaining the divorce through the competent Court or by custom, the appellant had contracted the second marriage with Rehana alias Renuka in the Court, which fact was proved by the evidence of the second wife. It was submitted by the learned advocate for the appellant that the second marriage was not proved and merely keeping a mistress was not in breach of Rule 26 of the Rules. In my view, the submission of the learned advocate for the appellant is devoid of any merit. When the second wife, Rehana alias Renuka, had admitted that she had contracted marriage with the appellant in the Court of law, it cannot be said that Rehana alias Renuka was staying with the appellant as his mistress.

13. The learned advocate for the appellant has placed reliance on the decision of the Apex Court in the case of Kanwal Ram and others vs. The Himachl Pradesh

Administration, reported in AIR 1966 Supreme Court 614, in support of the submission that, in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved and admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case. As noted earlier, in the departmental proceedings, strict rules of evidence are not applicable. In the criminal trial, the charge has to be proved beyond doubt. When the appellant was chargesheeted for having committed breach of Rule 26, the Department was only required to prove that, during subsistence of the first marriage, the appellant had contracted the second marriage. Through the evidence of the first wife, Reshmidevi, and the second wife, Rehana alias Renuka, it was proved by the Department that the appellant had contracted the second marriage with Rehana alias Renuka during subsistence of the first marriage. The evidence of the witnesses examined during the departmental enquiry proceeding had proved that the appellant had committed breach of Rule 26 of the Rules. The Enquiry Officer had, in detail, in his report, dealt with the entire evidence produced before him in coming to the conclusion that the appellant had contracted the second marriage by committing breach of Rule 26 of the Rules. The Civil Court cannot reappreciate the evidence led before the departmental enquiry and cannot interfere with the said finding of fact recorded by the Enquiry Officer unless those findings are perverse or arrived at by non-observance of the principles of natural justice, or there was gross violation of the guidelines prescribed in conducting the departmental enquiry. No such infirmity has been pointed out during the course of hearing of the appeal by the learned advocate for the appellant.

14. It was contended by the learned advocate for the appellant that, during the departmental enquiry, no Presenting Officer was appointed and, therefore, the enquiry was vitiated and, therefore, the consequential order of removal was bad in law. In my view, the submission of the learned advocate for the appellant does not deserve any merit. In the case of M/s. Bharat Electronics vs. Sri K. Kasi and another, reported in 1986 (2) All India Services Law Journal, p.43, the learned single Judge of the Karnataka High Court, in paragraph 8, at page 49, has held that there is no legal compulsion that Presenting Officer should be appointed in a domestic enquiry. The Court had relied upon the decision reported at 1980 (1) ILR 575 in the case of Gopalakrishna Reddy v.State of Karnataka, for holding that the mere fact that the Presenting Officer was not

appointed is no ground to set aside the inquiry. Similar view was taken by the Kerala High Court in the case of H. Rajendra Pai vs. Chairman, Canara Bank and others, reported at 1990(1) SLR p.127, wherein, it was held that the mere fact that Presenting Officer was not appointed and witnesses examined by the Inquiring Officer does not vitiate the enquiry. In that case, the delinquent officer had never objected to the examination of witnesses by the Inquiring Officer nor did he insist on the appointment of Presenting Officer. In the present case also, the appellant had never objected to the examination of witnesses by the Inquiring Officer and had never insisted that a Presenting Officer should be appointed. During the course of trial also, the appellant had not examined himself and had never agitated before the Court that, as the Presenting Officer was not appointed, the enquiry was vitiated. Therefore, merely because the Presenting Officer was not appointed, the enquiry is not vitiated and cannot be termed as illegal.

15. It was contended by the learned advocate for the appellant that the Enquiry Officer had cross examined the mother of the appellant, Vasantidevi Chhotalal Barbar, and, therefore, the Enquiry Officer was having biased mind and, hence, the whole proceeding before him should be held as vitiated. This submission also deserves to be rejected, because, only with a view to clarify the position, the Enquiry Officer had put questions to the mother of the appellant, Vasantidevi Chhotalal Barbar, and, therefore, it cannot be said that the Enquiry Officer had cross examined the witness.

16. The learned advocate for the appellant has further submitted that, even if the charge is proved against the appellant for having committed breach of Rule 26 of the Rules, the punishment of removal from service was, grossly, disproportionate to the charge levelled against him of having committed breach of Rule 26. In support of the above submission, the learned advocate for the appellant has placed reliance on the decision of the Division Bench of this Court in the case of Smt. R.A. Pathan vs. Director of Technical Education and others, reported at 22 (1981) GLR p.289, wherein, for breach of Rule 26, the promotion to the higher post of the delinquent was withheld for a period of three years only. Relying upon the above decision, the learned advocate for the appellant has submitted that the punishment imposed on the appellant of removal from service was disproportionate. In the case of Smt. R.A. Pathan (supra), the delinquent-lady employee was serving as Junior Clerk in the Office of the Director of Technical

Education. The appellant, in this case, is a constable serving in SRP Group No.2. The Department, in which the appellant was serving, requires strict discipline and high integrity. Having two or more wives at a time which may result into a larger family will in all probability demand of a Government servant larger resources for maintaining his two wives and their offspring. If he is not able within the limits of his salary to maintain such a large family, which is of his own creation, he is likely to seek alternative sources of income-lawful and unlawful- because human nature being what it is, every individual would like to live and live happily. When a Government servant is torn between his loyalty to his service and an imperative need to maintain to large family, he may compromise with his integrity and resort to make questionable means to meet the needs of maintaining his family. Such a situation will lead to impairment of his loyalty which is bound to tell upon public service. Need to look elsewhere to find additional sources of income to meet such a contingency is also likely to impair his efficiency because an unusually increased need in such a situation will derogate from his single-minded devotion to duties which he is supposed to bring to bear upon. The need to find out alternative sources of income, otherwise lawful, is also likely to derogate from his singleminded devotion to duty. The appellant, in response to the second show cause notice issued to him on January 30, 1991, had filed reply through his advocate and, in the said reply also, he had not pleaded that, instead of the order of removal, lenient view may be taken and a lesser punishment may be imposed on him. On the contrary, he had challenged the whole enquiry and the finding recorded by the Enquiry Officer on merit. At this stage, the punishment imposed on the appellant cannot be said to be disproportionate in view of the fact that the appellant had already retired from service on August 31, 1999. On the contrary, the conduct of the appellant does not deserve any leniency or sympathy. In spite of having retired in the month of August 1999, he still retained the Government quarter. In view of the fact that the appellant had never prayed for a lesser punishment, it cannot be said that the punishment imposed on the appellant is disproportionate to the charge proved against him. On the contrary, the cadre to which the appellant belonged requires strict discipline and his misconduct of having contracted the second marriage does not call for any lesser punishment than the removal from service. Therefore, in my view, it cannot be said that the punishment imposed on the appellant is disproportionate to the charge proved against him.

17. As a result of foregoing discussion, the appeal fails and is dismissed with no order as to costs.

(M.H. Kadri,J.)

(swamy)